

IN THE MATTER OF : BEFORE THE  
SANG J. KIM : HOWARD COUNTY  
t/a WING’S SPORT CAFÉ : BOARD OF APPEALS  
Petitioner : HEARING EXAMINER  
 : BA Case No. 06-22N

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**DECISION AND ORDER**

On June 26, 2006, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard the petition of Sang J. Kim, trading as Wing’s Sport Café, Petitioner, for the confirmation and expansion of a nonconforming use restaurant and beverage establishment located in a CE-CLI (Corridor Employment – Continuing Light Industrial) Zoning District, filed pursuant to Section 129 of the Howard County Zoning Regulations (the "Zoning Regulations").

The Petitioner provided certification that notice of the hearing was advertised and certified that the property was posted as required by the Howard County Code. I viewed the property as required by the Hearing Examiner Rules of Procedure.

Sang W. Oh, Esquire, represented the Petitioner. No one testified in support of the petition. No one appeared in opposition to the petition.

**FINDINGS OF FACT**

Based upon the evidence presented at the hearing, I find as follows:

1. The subject property, known as 8406 Washington Boulevard (U.S. Route 1), is located in the 6<sup>th</sup> Election District on the west side of Washington Boulevard about 200 feet north of Patuxent Range Road in Jessup (the “Property”). The Property is identified on Tax Map 43, Grid

19 as Parcel 500.

The Property is a rectangular-shaped, 2.176-acre lot with about 125 feet of frontage on Washington Boulevard. The Property is about 782 feet deep and widens slightly to about 129 feet at its greatest width at the rear lot line.

The Property is improved with a two-story frame building that is about 5,878 square feet in area (both floors). The building is situated about 18 feet from Washington Boulevard and 2.5 feet from the south side lot line. Behind the building is a fence structure. The Property is paved in front of the building and to the east side with no curb or defined entranceway. To the rear of the Property, to about 380 feet from the front lot line, is a large expanse of gravel-surfacing. The rear portion of the Property is wooded. The front portion is level.

2. The Property was zoned M-1 (Manufacturing: Light) until April 13, 2004, when it was rezoned CE-CLI. The Petitioner provided a 1986 location survey showing the building in its present location and labeling it "Robinson's County (sic) Inn." The Petitioner provided an affidavit of Raymond L. Sites, the previous owner of the Property, who stated that he operated a restaurant and beverage establishment from the first floor of the building from February 14, 2000 to August 9, 2004. The area of the building used for the restaurant and bar was 3,990 square feet. The Petitioner provided his own affidavit in which he stated that he purchased the Property on August 9, 2004, at which time he ceased operation of the restaurant and bar in order to begin renovations of the structure. In June 2005, the Petitioner removed a portion of the rear of the structure.

3. The Petitioner proposes to construct two additions onto the rear of the building that would total 910 square feet of floor area. The Petitioner will also remove the paving in front of the building, install a landscaped buffer area, establish a curbed commercial entrance, and add a new paved parking lot with 45 parking spaces and an enclosed dumpster pad at the rear of the parking lot. Upon completion of the improvements, the Petitioner proposes to continue the restaurant and bar use. The petition identifies only the front half of the Property as the nonconforming use site.

4. Vicinal properties include:

(a) To the north are Parcel 526, which is improved with an industrial building and a material storage tower, and Parcel 629, which is used as an outdoor storage yard. Both properties are zoned CE-CLI

(b) To the east across Washington Boulevard Parcel 502, a large CE-CLI zoned lot improved with a motor vehicle repair facility and outdoor storage yard.

(c) To the south is Parcel 501, which is also zoned CE-CLI and is improved with a two-story contractor's office building, outdoor storage yard, and commercial communications monopole.

(d) To the west is Parcel 235, which is zoned M-1-MXD-3 and is the site of a large stone quarry approved in BA Case No. 95-58E.

### CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, I conclude as follows:

#### **I. Confirmation of Nonconforming Uses (Section 129.D):**

A nonconforming use is any lawful existing use, whether of a structure or a tract of land, which does not conform to the use regulations of the zoning district in which it is located, either on the effective date of those regulations or as a result of any subsequent amendment thereto. Such use may be confirmed if it is shown by a preponderance of evidence that the use existed at the time of the zoning change and has continued uninterrupted since that date. If a nonconforming use ceases for any reason for a period of more than two years, then any future use shall conform to the current Zoning Regulations. See Section 129.A&B.

In this case, the Petitioner has presented uncontroverted evidence in the form of affidavit testimony and a location survey that the front portion of the Property and the first floor of the building, totaling 3,990 square feet, were used as a restaurant and beverage establishment on April 14, 2004 and continued uninterrupted until August 9, 2004.<sup>1</sup> Consequently, I conclude that the use depicted in the petition and nonconforming use plan submitted by the Petitioner is nonconforming in accordance with Section 129.D.

#### **II. Extension, Enlargement or Alteration of Nonconforming Uses (Section 129.E).**

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<sup>1</sup> Because the use has not been in cessation for more than two years, it may be considered "uninterrupted" within the meaning of the Zoning Regulations.

A. The Petitioner proposes to construct two additions totaling 910 square feet onto the rear of the building, remove the paving in front of the building, install a landscaped buffer area, establish a curbed commercial entrance, and add a new paved parking lot with 45 parking spaces and an enclosed dumpster pad at the rear of the parking lot. Upon completion of the improvements, the Petitioner proposes to continue the restaurant and bar use. The addition therefore will not change the use in any substantial way, in accordance with Section 129.E.1.a.

B. The 910 square feet of additions will be about 23% of the gross floor area of the 3,990 square foot restaurant and bar use, which is less than the maximum increase of 100% of the gross floor area allowed by Section 129.E.1.b.

C. The outdoor land area occupied by the nonconforming use will not be enlarged in compliance with Section 129.E.1.c.

D. The DPZ Report indicates that the proposed additions and parking will be in compliance with the CE District setback requirements for properties developed prior to the creation of the CE District. The proposed improvements will therefore not cause a violation of the bulk regulations for the CE zone, in accordance with Section 129.E.1.d.

E. The proposed additions will be located to the rear of the existing building. The additions will be used for indoor uses and will not generate excessive noise, odors, or other adverse affects. The paving and reconfiguration of the parking lot should improve on-site circulation and will be buffered with landscaping. Consequently, the proposed improvements will not cause an adverse effect on vicinal properties in accordance with Section 129.E.1.e.

**ORDER**

Based upon the foregoing, it is this **14<sup>th</sup> day of July 2006**, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

That the Petition of Sang J. Kim, trading as Wing's Sport Café, for the confirmation and expansion of a nonconforming use restaurant and beverage establishment located in a CE-CLI (Corridor Employment – Continuing Light Industrial) Zoning District is hereby **GRANTED**;

**Provided, however**, that the nonconforming use and enlargement will apply only to the land area, uses and structures as described in the petition submitted and not to any other activities, uses, structures, or additions on the Property.

**HOWARD COUNTY BOARD OF APPEALS  
HEARING EXAMINER**

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Thomas P. Carbo

Date Mailed: \_\_\_\_\_

Notice: A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.